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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re IRVING M., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

IRVING M.,

Defendant and Appellant.

D057053

(Super. Ct. No. J 225-060)

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn M. Caietti, Judge, and Lawrence Kapiloff, Judge. (Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Affirmed.

The juvenile court (Judge Kapiloff) sustained a Welfare and Institutions Code section 602 petition alleging Irving M. committed assault by means of force likely to produce great bodily injury, in violation of Penal Code section 245, subdivision (a)(1), a

felony, and in doing so personally inflicted great bodily injury upon Daniel G. in violation of Penal Code sections 12022.7, subdivision (a) and 1192.7, subdivision (c)(8). The court dismissed two other counts, finding they were "not necessary" and "part of the same incident."

At the disposition hearing, the court (Judge Caietti) declared defendant a ward of the court, placed him on formal probation and imposed various fines, including victim restitution.

### FACTS AND PROCEDURAL BACKGROUND

On January 14, 2010, defendant, victim Daniel, and two other juveniles were standing next to the door of the gym at Patrick Henry High School waiting for roll call. Defendant approached Daniel and told him to "be careful, to not get caught up with my girlfriend, and stuff like that." When Daniel told defendant to stay out of his "business," the two started arguing.

A security camera pointed towards the locker room silently recorded the two-minute incident. It showed defendant and Daniel face-to-face with other boys trying to push defendant away from Daniel. Thereafter, defendant slapped, then punched, Daniel in the right eye. Daniel did not swing back, and again the other boys tried to pull defendant away from Daniel. While Daniel was up against a wall protectively covering his face and head with his hands, defendant continued hitting him, then kicked him in the area of his cheek. As a result of the incident, Daniel lost consciousness temporarily, could not see out of his right eye, was hospitalized for three days, and one month later continued to suffer from headaches and double vision.

Two days before the February 10 adjudication hearing, defendant appeared before Judge Caietti for a settlement conference. The court was informed that defendant and the District Attorney had reached a resolution and that defendant would admit to violating Penal Code section 243, subdivision (d), a felony, as alleged in count 3 of an amended petition. After the court advised defendant of his constitutional rights, defendant admitted count 3. After counsel set forth the factual basis for the admission, the court asked defendant if he agreed that is what happened on January 14. Defendant equivocated and his counsel tried to clarify the matter.

The court then followed up with a series of questions directed to defendant to determine whether he understood the nature of the allegations as required by California Rules of Court, rule 5.778(c). Specifically, the court attempted to ascertain whether defendant admitted that he unlawfully battered Daniel or whether he was contending that he acted in self-defense. Among his responses to the court's questions, defendant stated: "So when [Daniel] says that he wasn't still fighting me, to me it looked like he was and when I kicked him he was still against the wall." Defendant also stated that he could not "really say" whether or not Daniel had stopped fighting when he hit him. Following a discussion off the record, the court stated it could not make the requisite factual finding, declined to accept defendant's admission and confirmed the trial date.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as a possible but not arguable issue, whether the court erred in refusing to accept defendant's factual basis for an admission to the felony battery count. We granted defendant permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented defendant on appeal.

#### DISPOSITION

The judgment is affirmed.

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HALLER, J.

WE CONCUR:

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McCONNELL, P. J.

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IRION, J.